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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re NATHANIEL RAY ROUSE,
on Habeas Corpus.

A128151

(Alameda County
Super. Ct. No. 67046)

Petitioner Nathaniel Ray Rouse, who is serving a life term for murder, challenges a May 2009 decision of the Board of Parole Hearing denying parole. In reaching its decision, the Board cited the commitment offense and Rouse's lack of insight. Applying the principles established by our Supreme Court in *In re Lawrence* (2008) 44 Cal.4th 1181 (*Lawrence*), we conclude the Board's decision does not withstand judicial scrutiny. The record does not contain some evidence to support the Board's finding Rouse currently poses a threat to public safety. We direct the Board to hold a new hearing. (See *In re Prather* (2010) 50 Cal.4th 238, 244.)

I. BACKGROUND

A. The Commitment Offense

The Board read into the record a summary of the commitment offense taken from the probation report. On March 31, 1978, Rouse and a woman named Marion Thorpe (a.k.a. Danielle Blake) went to a used car dealer in Oakland and expressed interest in buying a car. The victim, Rooholah Faryabidoust, accompanied Rouse and Thorpe on a test drive. At some point during the test drive, petitioner beat Faryabidoust to death.

Rouse and Thorpe then dumped his body in a field near Antioch. Faryabidoust's hands were tied behind his back, and his head was covered with plastic secured around his neck with an electrical cord. The cause of death was blunt force trauma to the head and face.

Rouse or Thorpe called the car dealership and reported that they had dropped Faryabidoust off, and that they would return later to purchase the car. Rouse pawned the victim's watch the next day. Four days later Rouse and Thorpe were arrested in King City. Petitioner gave a statement to the police describing what had happened to Faryabidoust.

In 2008, Rouse gave the following account to a psychologist who prepared a report for the Board: “ ‘The night prior I had no thought of the crime. Danielle had been driving her car and she tore up the undercarriage. I was in love with her. She talked about us needing a car. She said, “Let’s take a car for a test drive and steal it.” [¶] It was raining bad. I faked something wrong with the car. I got in a fight with the car dealer. I beat him unconscious. I drove to an old gas station. I tied him up and got a plastic bag over his head. We phoned his office. After I was arrested, I showed the officers where the body was.’ ”

Rouse was 20 years old when he committed the murder. The victim was 49 years old. The district attorney charged Rouse with murder with special circumstances, robbery, kidnapping, and automobile theft. Rouse pled guilty to first degree murder. The other charges were dismissed and the court sentenced Rouse to prison for a term of 7 years to life.

B. Rouse's Criminal History

The life crime was Rouse's only adult arrest and conviction. As a juvenile he was arrested for stealing a ring from a department store.

C. Rouse's Disciplinary History, Institutional Programming and Parole Plans

Rouse had not received a serious (115) disciplinary report during his 30 years of incarceration. It had been approximately 15 years since Rouse had received even a minor (128-A) report documenting a minor infraction of prison rules.

Rouse earned his GED and an AA degree while incarcerated. He had participated in self-help groups and personal development courses. His most recent work assignment was as a clerk. He received letters of support from several prison staff members.

Rouse expressed interest in a transitional housing arrangement should he be paroled. Ultimately he wanted to live with his wife. Rouse had a number of job skills, but he expressed interest in counseling young people. He had job offers from counseling programs located in the Bay Area. The correctional counselors assigned to review Rouse's case stated in their report: "Rouse should have no difficulty finding employment as his work reports while incarcerated have all showed him to excel in any position he has been assigned to."

D. 2008 Psychological Evaluation

The most recent psychological evaluation available to the Board was prepared in February 2008 by Robert Record, Ph.D. According to the evaluation, Rouse had no history of psychiatric problems or treatment. Record found no diagnosable mental disorders or substance abuse problems. Rouse scored in the very low range for future violence in the community on psychological assessment tools utilized by Record. Based on the assessment tools, a file review, and the clinical interview with Rouse, Record opined that Rouse posed a very low risk for future violence.

E. Insight and Remorse

Rouse attempted to explain to the Board at the May 2009 parole hearing why he murdered Faryabidoust within months of coming to California. Rouse began with describing how he had decided to leave his home in North Carolina and come to California. The sequence of events described by Rouse is not entirely clear, but he

apparently met his co-defendant Thorpe and they decided to live together in California. Rouse believed it was his responsibility to provide for Thorpe, but he had no money or job. When Thorpe seriously damaged her car, Rouse felt overwhelmed. He feared losing his relationship with Thorpe.

Rouse attributed his extreme fear of losing Thorpe to being abandoned by his father: “You know, I told myself that I would never ever be like my father, and but at the same time I’m holding onto feelings of being abandoned by him, so when I’m with [Thorpe] I’m afraid of losing my relationship with this person, I’m scared that I’m going to lose this, so Mr. Faryabidoust’s life was not more important to me than it was for me to have that relationship with this person, because I was afraid to give that up.”

Thus, Rouse decided getting a car and traveling to San Diego with Thorpe (who had family there) was more important than a human life. He had a “couple of weeks” to think about it. “I tied his hands up. I put a bag over his head. I used an extension cord to kill a human being, because I wanted a car, because I wanted to be in love with somebody. You can’t do that to people.”

When the Board pressed Rouse on what in his “brain” caused him to kill Faryabidoust, Rouse related troubles he faced back at home as other possible precursors to the crime, but he again circled back to the fact that he was willing to do anything to keep from being abandoned again. In his closing statement to the Board, Rouse acknowledged the killing was senseless, “because at [that] time of my life I didn’t have any sense.” He also acknowledged that when he first came to prison he lied and minimized his actions in killing Faryabidoust. He now knew the killing was his fault alone.

On the extent to which Rouse had explored the commitment offense and come to terms with the underlying causes, Record (the psychologist) reported: “Mr. Rouse has clearly demonstrated his exploration of the commitment offense and come to terms with the underlying cause. He quickly discussed his part in the commission at the time of the

arrest. He has not made any denials throughout his entire time of incarceration. He is able to express verbally and precisely how the commitment offense occurred and his role in that commitment offense. This issue should not be a problem for him in the future.”

F. Prior Parole Decisions

The Board found Rouse suitable for parole on three different occasions, in 2002, 2005, and 2006. In each case the governor reversed the Board’s decision.

G. The May 2009 Parole Decision

The May 2009 parole hearing was Rouse’s 17th subsequent parole consideration hearing. A representative from the Alameda County District Attorney’s Office appeared at the parole hearing to oppose the release of Rouse.

Rouse initially declined to discuss the facts of the commitment offense, but he agreed to discuss the “underlying causative factors” and “some of the variables that led up to the commitment offense.” Ultimately Rouse did discuss in some detail the circumstances leading up to the murder and the facts of the commitment offense. He also attempted to articulate the causes or reasons that led to his taking Faryabidoust’s life.

The Board acknowledged that it had a “very difficult time making a decision.” The Board concluded Rouse was not suitable for parole because he posed a present risk of danger to society or a threat to public safety. To support this conclusion, the Board first cited the commitment offense. Although the crime happened “a very long time ago,” the Board described the crime variously as brutal, horrific, heinous, and senseless. The Board found there was no reason to kill the victim and stated “this was a real concern to the panel.”

The Board rejected Rouse’s explanation for why he committed the crime: “We don’t believe true love would’ve caused you to all of a sudden turn into this person who could beat somebody to death either. We see rage. We see greed.” The Board questioned “why all of a sudden out of nowhere” Rouse committed the murder given his lack of criminal history or other indicators for violence. “[I]t’s inexplicable how this

violent thing could have happened, and . . . we don't feel that you explained it well." The Board believed Rouse felt "bad" about the killing, "but, again, it's the insight into the reasons why"

H. The Superior Court's Order

Rouse filed a petition for writ of habeas corpus in Alameda County Superior Court. While correctly stating the law, that court apparently (and unfortunately) applied the law to the wrong set of facts, citing Rouse's "past history of domestic violence." The Board did not mention domestic violence, and nothing in the record even remotely suggests domestic violence is an issue in Rouse's case.

The superior court denied the petition.

II. DISCUSSION

"[T]he Penal Code and corresponding regulations establish that the fundamental consideration in parole decisions is public safety." (*Lawrence, supra*, 44 Cal.4th at p. 1205; see Pen. Code, § 3041; Cal. Code Regs., tit. 15, §§ 2281, 2402.) Thus, the relevant inquiry for a court reviewing a Board parole decision is whether some evidence supports the Board's conclusion that the inmate constitutes a current threat to public safety. (*Lawrence, supra*, at p. 1212.) If the Board's decision to deny parole is not supported by some evidence, the court should grant the prisoner's petition for writ of habeas corpus and order the Board to vacate its decision. (*Id.* at p. 1210.)

The underlying circumstances of the commitment offense alone will "rarely" provide a valid basis for denying parole after the prisoner has served the suggested base term and demonstrated evidence of rehabilitation. (*Lawrence, supra*, 44 Cal.4th at p. 1211.) Nevertheless, the Board may continue to rely upon the aggravated circumstances of the commitment offense to deny parole when "the record also establishes that something in the prisoner's pre- or post incarceration history, or his or her current demeanor and mental state, indicates that the implications regarding the prisoner's dangerousness that derive from his or her commission of the commitment

offense remain probative of the statutory determination of a continuing threat to public safety.” (*Id.* at p. 1214.)

Rouse’s commitment offense was undoubtedly heinous and senseless. But under the principles established in *Lawrence*, and given the passage of over 30 years since the commitment offense and Rouse’s positive adjustment in prison, the aggravated nature of the commitment offense, alone, will no longer support a denial of parole. The Board believed Rouse remained a danger (and the commitment offense remained relevant) based on Rouse’s inability to provide a more persuasive explanation for why he committed the crime.

The inability of a prisoner to understand why he committed a crime is obviously cause for concern. (See *In re Shaputis* (2008) 44 Cal.4th 1241, 1260 [evidence that prisoner’s character remained unchanged and that he lacked insight into his antisocial behavior provided evidence he remained dangerous].) The record here, however, reflects that Rouse, while not providing a more immediate explanation for the crime, has indeed explored the commitment offense and has attempted to explain his reasons for committing the crime to the best of his ability. The Board rejected that explanation and substituted its own theory, that Rouse was driven to commit the crime by rage or greed. That theory is plausible, but even if correct, there is nothing in the record supporting a finding that Rouse currently exhibits bouts of rage or greed. To the contrary, his near spotless prison record, and positive adjustment and programming belie any conclusion that he has undisclosed feelings of rage or greed. Further, the fact—or in this case, suspicion—that Rouse committed the life crime out of feelings of rage or greed over 30 years ago does not support a finding that he currently remains dangerous.

The Board’s analysis also utilized factors generally supporting a grant of parole as a means to raise the bar on Rouse’s parole bid. The Board repeatedly commented on the absence of a history of crimes or violence, which is generally a strong predictor of a low risk of future violence and a regulatory factor supporting suitability for release (Cal. Code

Regs., tit. 15, § 2281, subd. (d)(6), and see subd. (c)(2) [previous record of violence as factor showing unsuitability]). The Board then used this factor against Rouse by persistently asking how a person with no criminal or violent history could commit such a violent murder, and demanding that he explain this *to the Board's satisfaction*.¹ (“You [didn’t] have a criminal record. You came out here, and you murder this man for basically no reason” “You were never on probation or parole, and so this is the thing that we’re concerned about is why all of a sudden out of nowhere could this happen” “[I]t’s the insight into the reasons why, and how you could’ve done that after all that time not doing anything [criminal].” “We’re not convinced that [your explanation] is really actually the factor that led you to go from somebody who’s absolutely not been a criminal, and didn’t have . . . [a] criminal attitude and bent to just murder [t]his man.”

In sum, whatever difficulty Rouse may have had in explaining the motivation for his actions, it has not affected his ability to express remorse and to accept full responsibility for the crime. He has accepted at least some responsibility from the outset, pleading guilty to first degree murder. He acknowledged minimizing his culpability during the early years of his incarceration, but lack of remorse has generally not been an issue at Rouse’s parole hearings in the last decade.

The Attorney General, though not arguing Rouse lacks remorse, does assert Rouse offered no insight into how stealing a car led to murder. The Attorney General also maintains Rouse failed to discuss the extreme violence with which he took the victim’s life. As we have explained, Rouse has offered an adequate, if psychologically nuanced explanation for his actions. Rouse had also stated in the past that the victim was killed to eliminate a witness. His failure to provide an explanation that satisfied the Board does not demonstrate an unacceptable lack of insight, let alone current dangerousness,

¹ Similarly, the Board used Rouse’s complete absence of alcohol or drug abuse issues not as a factor favoring parole, but as a reason to support their position that Rouse’s life crime motives had not been adequately explained.

particularly in light of the conclusion in the psychological evaluation that there is no empirical data to indicate Rouse's exemplary behavior in prison would change if he were paroled.

The Board has found Rouse suitable for parole on three separate occasions over the last decade. In a letter of support, Associate Warden K.J. Williams wrote: "Rouse has been found suitable for parole three times in the past only to have the Board's decision reversed at the gubernatorial level, yet he continues to maintain a positive attitude and character that I determine to be outstanding. There is no doubt that if the Board paroled Rouse, he would continue to maintain the level of productivity that I have observed over the years that I have known him."

We conclude the most recent Board decision finding Rouse not suitable for parole is not supported by some evidence.

Rouse contends the proper remedy is to order the Board to set a release date. The proper remedy, however, as determined by our Supreme Court, is to direct the Board to conduct a new parole suitability hearing in accordance with due process of law and consistent with the decision of this court. (*In re Prather, supra*, 50 Cal.4th at p. 244.)

III. DISPOSITION

The petition for writ of habeas corpus is granted. The Board shall vacate its May 2009 decision finding Rouse unsuitable for parole and conduct a new parole suitability hearing within 60 days of the issuance of the remittitur in this matter, in accordance with due process of law and consistent with the decision of this court. This opinion

shall be final as to this court within 10 days after it is filed. (See Cal. Rules of Court, rule 8.387(b)(3)(A).)

RIVERA, J.

We concur:

REARDON, Acting P.J.

SEPULVEDA, J.